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PURPOSE

To establish when an authorization is needed to use and disclose individually identifiable information.

DEFINITIONS

Refer to HIPAA Policies and Procedures Definition Glossary.

POLICY

Authorization Required - Uses and Disclosures that require a signed HIPAA compliant authorization:


- Marketing;
- To disclose to third parties on the request of the individual;
- When individual admits to a crime when requesting treatment, or while in treatment, except as required by law.

Permitted Uses and Disclosures - No Authorization Required

The Department of Licensing and Regulatory Affairs (LARA) is permitted to use or disclose protected health information without a valid authorization as follows:

(See procedures for specific requirements and details.)

- About child or elder victims of abuse, neglect, or domestic violence;
- For treatment, payment, or health care operations;
- In a limited data set with a signed data use agreement;
- For public health activities;
- For health oversight activities;
- For law enforcement purposes;
- About decedents;
- For research purposes under certain conditions;
- To avert serious health and safety threats, for specialized government functions, for workers compensation;

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- To assist disaster relief agencies;
- For some purposes required by law;
- Other applicable privacy or confidentiality laws can be more restrictive than HIPAA. Laws that provide the individual with greater privacy protection or rights must be complied with. (Examples of state and federal laws are: Medicaid, Substance Abuse, Public Health Code, HI VIA IDS/S TDs, Mental Health Code).


Uses and Disclosures that require giving individual the right to agree or object, opt out, or be notified of the use or disclosure: (See procedures for specific requirements and details.)

- Place name in facility directory (agree or object);
- To family members and others in certain situations (agree or object);
- About adult victims of abuse, neglect, or domestic violence (agree or object);
- For judicial and administrative proceedings, when in response to a subpoena, discovery request, or other lawful process (agree or object);
- Victims of a crime (may agree or object, or must be informed with some exceptions);
- For Fundraising activities (opt out)
- For Disaster Relief, if the individual has capacity, and as long as the requirement does not interfere with the ability to respond to the emergency.
- For some purposes required by law;

Required Disclosures

LARA will use or disclose protected health information:

- to the individual, when requested under, and as required under Individual Rights, and
- when required by the Secretary of the Department of Health and Human Services to investigate the department's compliance with the Privacy Regulations.

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PROCEDURE

Permitted Uses and Disclosures

The department is permitted to use or disclose protected health information without an authorization as follows:

To avert serious health and safety threats * Disclosure may be made if the Covered Entity (CE), in **good faith**, believes:

- the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and
- is to a person(s) able to prevent or lessen the threat, including the target of the threat, or

Disclosure is necessary for law enforcement authorities to identify or apprehend an individual:

- because the individual made a statement admitting to participation in a violent crime that the CE believes may have caused serious physical harm to a victim, or
- Where it appears the individual may have escaped from lawful custody (164.501).

Child or elder victims of abuse, neglect, or domestic violence *

To a government authority, including a social service or protective services agency, **authorized by law** to receive such report.


About decedents *

See Decedents Policy and Procedure

To assist disaster relief agencies *

To a public or private entity authorized by law or by its charter to assist in disaster relief efforts.

The disclosure is made to coordinate efforts to notify, locate, or identify an

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individual's family member, friend, personal representative, or other person involved with the individual's care.

The disclosure can include information about the individual's location, general condition, or death.

The information can be used by the organizations to help individuals obtain needed medical care for injuries or other health conditions caused by a disaster.

Disclosure is always permitted to a provider for treatment purposes.

For health oversight activities authorized by law *


Examples:

- Audits
- Civil administrative, or criminal investigations-proceedings-actions
- Inspections
- Licensure or disciplinary actions

Necessary to oversee:

- Health care system
- Government benefit programs (health info relevant to eligibility)
- Compliance with program standards
- Entities that are subject to civil rights laws for which health information is necessary for determining compliance

(Should not include investigation of the individual except where it relates to an individual obtaining public health benefits.)

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For judicial and administrative proceedings *

In response to:

- An order of a court or administrative tribunal
- A subpoena
- Discovery request
- Other lawful process

Disclose only the PHI expressly authorized by the order. The individual may object. Requestor must assure LARA that a good faith effort was made to notify the individual of the request for PHI, or that a qualified protective order for the PHI has been secured.


For law enforcement purposes *

To a **law enforcement official** to report information as **required by law**:

- PHI may be disclosed pursuant to process and as otherwise required by law, i.e., court order, subpoena or summons, administrative subpoena, etc. Limit PHI disclosed to what is relevant to the request.
- Limited information for **identification** and **location** purposes - of a suspect, fugitive, material witness or missing person may be disclosed. (Process, subpoena, court order not required)

The only information that may be disclosed is:

- Name and address
- Date and place of birth
- Social security number
- ABO blood type and rh factor
- Type of injury
- Date and time of treatment
- Date and time of death
- Description of physical characteristic

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*Information **NOT** to be disclosed in this instance:*

- DNA
- Dental records
- Typing
- Samples or analysis of fluids or tissue

PHI Disclosure concerning victims of a crime permitted with the victim's agreement. If the victim does not have capacity, or an emergency situation exists where the victim cannot agree to the disclosure, PHI may be disclosed providing:
(Please see [45CFR164.512 \(f\) \(3\) \(ii\)](#))

- The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
 - The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
 - The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.
- c) PHI Disclosure concerning Decedents if there is a suspicion the death was the result of criminal conduct.
- d) PHI evidence of crime on premises of the covered entity (CE has good faith belief the PHI constitutes evidence of the crime)
- e) A provider may disclose PHI in responding to a medical emergency resulting from a crime.

In a limited data set with a signed data use agreement *

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In a limited data set and MDCH has entered into a data use agreement with the recipient of the information as outlined in the rule See policy and procedure on Limited Data Set.

For public health activities *

To a **public health authority** that is **authorized by law** to collect or receive such information:

To report:

- Disease or injury
- Exposure to communicable disease
- Vital statistics

Or to conduct:


- Public health surveillance
- Investigations
- Interventions

To a **public health authority** or other **appropriate government authority** **authorized by law** to receive reports of child abuse or neglect.

To a person under FDA jurisdiction who oversees the quality, safety or effectiveness of FDA regulated products or activities.

- To collect or report adverse events, product defects or problems, or biological product deviations
- To track FDA regulated products
- To enable product recalls, repairs, or replacement
- To conduct post marketing surveillance

To a person who has been exposed to a communicable disease, if a law authorizes

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notification of the individual.

To an employer when the individual is a member of the workforce and information is used to conduct a medical surveillance of the workplace or to evaluate whether a work related illness or injury occurred.

For research purposes under certain conditions *

See Research Policy and Procedures.

For Treatment ... (TPO) *

For CE's own treatment purpose or **to a provider** for treatment

[45 CFR 164.506](#)

For **Provision** of Treatment

For **Coordination** of Treatment

For **Management** of Treatment

For **Consultation** between providers

For **Referral** - between one or more provider

For Payment ... (TPO) *

- For CE's own Payment purposes

- To another CE or provider for that entity's payment activities

[\(45 CFR 164.506\)](#)

For **Premiums** to Health Plans

To Obtain or provide reimbursement for the provision of healthcare

For **Eligibility Determination**

For **Coordination of Benefits**

For **Cost Sharing**


For **Adjudication**

For **Subrogation**

For **Risk Adjusting**

For **Billing**

For **Claims management**

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For **Collections**

For **Reinsurance**

To Review for medical necessity, Health Plan coverage, Appropriateness of Care,

Justification of Charges

For **Utilization Review**, Pre-certification, Preauthorization, Concurrent and Retrospective Review

For a **Consumer reporting** agency to collect premiums or reimbursement - the following information can be released:


- Name and address,
- Date of Birth,
- SS#,
- Payment history,
- Account #,
- Name and address of the health care provider and/or plan.

For Health Care Operations ... (TPO) *

- For CE's own Operations
- To another CE for its operations IF (all of following):
 - 1) Each CE has or had relationship with the individual,
 - 2) The PHI pertains to the relationship &
 - 3) The disclosure is for the purpose of health care fraud and abuse detection or compliance, or for one of the descriptions in number 1 or 2 following.


Health Care Operations includes the following activities:

1. For **Quality Assessment and Improvement activities** - population based activities relating to improving health or reducing health care costs, outcomes evaluations, development of clinical guidelines, protocol development, case mgt, care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;

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2. To **Review competence or qualifications** of providers; practitioner or health plan performance; evaluation of practitioners and provider performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing;
3. For Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding securing or placing a contract for reinsurance of risk relating to claims for health care (unless health insurance benefits not placed with the health plan);
4. To Conduct, arrange for medical review, legal services, auditing, including fraud and abuse detection and compliance programs;
5. For Business planning and development, such as conducting cost-management and planning related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies;
6. For **Business management** and general administrative activities of the entity, including:
 - Management activities related to complying with privacy regulations,
 - Customer service - includes data analyses without release of PHI to a policyholder, plan sponsor or customer,
 - Resolution of internal grievances,
 - The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity.

Use of PHI to contact program participants for informational and educational efforts

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As part of health care operations, LARA provides information and education to governmental officials, policy makers, the media, and the public about health-related programs and services that benefit vulnerable populations. Participating individuals are often able to effectively convey information about a particular program or service based on the individual's experience with the program or service and how it has benefited them. PHI may be used by LARA to identify and contact such individuals concerning their experience and willingness to participate in informational and educational efforts. If the individual indicates willingness, the individual must sign a written authorization authorizing disclosure of PHI and consenting to participate in specific informational or educational efforts. LARA staff must obtain review by the Office of Legal Affairs of the written authorization that is to be presented to the individual to ensure that it sufficiently addresses this purpose.

For Workers Compensation

As authorized by workers' compensation laws.

Disclosures requiring that the client has the right to agree or object

Adult victims of abuse, neglect, or domestic violence *

To a government authority, including a social service or protective services agency, authorized **by law** to receive such reports and to the extent the report is required by law. An adult may have the option to not agree to the report. The adult victim must be informed - but there are exceptions.


Facility Directory *

State Facilities will each have their own facility directory procedures.

To family members and others in certain situations *

See Personal Representatives Policy and Procedure.

Required Disclosures

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LARA will use and disclose protected health information:

To the individual when requested under Client Rights. See Client Rights

When required by the Secretary of the Department of Health and Human Services/OCR To investigate LARA's compliance with the Privacy Regulations.

As required by State Law when not pre-empted by HIPAA. See appendix D - Pre-emption Analysis Flow Chart

**Note: Some applicable privacy or confidentiality laws are more restrictive than HIPAA. The law that provides the individual with greater privacy protection or rights must be complied with. (Examples of state and federal laws that require additional confidentiality protections are: Medicaid, Substance Abuse, Public Health Code, HIV/AIDS/STDs, and Mental Health Code.)*

REFERENCES

[45 CFR §160.304, §160.310, §164.501, §164.502, §164.506, §164.50B, §164.510, §164.512](#)